

The Administrative Law Judge denied claimant's request for benefits. Claimant requests this review and contends there was a lack of due process because claimant did not receive a copy of respondent's submission letter until after the Award was entered. Also, claimant concedes he sustained no permanent injury as a result of the electrocution of January 30, 1992, but contends he did sustain temporary injury for which he was entitled the benefits respondent voluntarily provided. The respondent argues the Award of the Administrative Law Judge assessing liability against the Workers Compensation Fund should be affirmed. The Workers Compensation Fund argues that it should not be required to reimburse the respondent because claimant did sustain temporary injury and the benefits paid to claimant were properly due him. Those are the issues now before the Appeals Board.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, the Appeals Board finds as follows:

The claim for benefits should be denied. At the time of taking of stipulations, the respondent advised the Administrative Law Judge and other parties that accidental injury arising out of and in the course of employment was one of the issues to be litigated. Because claimant was apparently satisfied there was no permanent injury resulting from the alleged accident and claimed no additional benefits over and above those that had been voluntarily provided, claimant neither testified, nor submitted evidence in this proceeding. The testimony of P. K. Sensarma, M.D., fails to address the issue whether claimant sustained personal injury arising out of and in the course of his employment with the respondent. Therefore, claimant's request for benefits must fail.

Claimant's argument that he was denied due process as a result of the failure to receive a copy of respondent's submission letter before the issuance of the Award is without merit. Claimant argues he was deprived of the right to rebut evidence presented by the respondent. Because the parties have the opportunity at any time to request permission to introduce rebuttal evidence, claimant's argument must fail. If the claimant felt it important to present rebuttal evidence, such request could have been made anytime after the deposition of Dr. Sensarma, the only witness to testify in the proceeding. The delayed receipt of the submission letter had no effect upon claimant's rights to due process of law.

The parties may now proceed to the certification process referenced in K.S.A. 44-534a(b) for any claim for reimbursement the respondent may have against the Workers Compensation Fund.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that claimant's request for benefits should be, and hereby is, denied.

IT IS SO ORDERED.

Dated this ____ day of June, 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Paul D. Hogan, Wichita, Kansas
J. Darin Hayes, Wichita, Kansas
Joel P. Hesse, Wichita, Kansas
John D. Clark, Administrative Law Judge
George Gomez, Director